TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 170.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

MONROE SALISBURY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED MAY 16, 1891.

(14647.)

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1 *Complaint.*

In the United States circuit court, ninth circuit, district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
MONROE SALISBURY, DEFENDANT.

The United States of America, the plaintiff above named, by its attorney, S. G. Hilborn, esq., complains against Monroe Salisbury, the defendant herein, and for cause of complaint shows the court:

I.

That on the 31st day of July, 1878, one W. W. Giddings, as principal, and John Eaves, Edwin R. Collins, and W. Z. Cook, as sureties, entered into a written contract with the plaintiff, acting in that behalf through and by D. M. Key, Postmaster-General, in which said contract the
2 said W. W. Giddings agreed and undertook, for and in consideration of the sum of $1,760.00 per year, to carry the United States mail upon the route then known as No. 39116, being the route between Fort Bascom, in the Territory of New Mexico, by way of Towner, Apache, Chico Spring, Kiowa, Troy, Una de Gata, Troybergh and Sugarita, to Trinidad and back once a week, for and during the term beginning on the 1st day of October, 1878, and ending on the 30th day of June, 1882.

That the contract hereinbefore mentioned was subject to and contained written thereon, among other things, certain conditions, stipulations and agreements, all of which are contained in a copy of said contract hereto annexed, marked Exhibit A, and made a part hereof.

That the said contract, after being duly executed by the said W. W. Giddings, and by the sureties above named, and duly accepted and approved by the plaintiff, through and by said D. M. Key, Post-
3 master-General, as aforesaid, was and now is on file in the Post-office Department of the United States.

That on the 21st day of December, 1878, the said W. W. Giddings sublet and subcontracted the carrying of the mail on the said route No. 39116 to the defendant, Monroe Salisbury, as appears by a certain subcontract in writing, duly signed and sealed by the said W. W. Giddings and the said Monroe Salisbury, of which said subcontract a copy is hereto annexed, marked Exhibit B, and made a part hereof.

That in pursuance of the contract hereinbefore mentioned between this plaintiff and the said W. W. Giddings, he, the said Giddings, on the 1st day of October, 1878, entered upon the performance of the service therein contracted for in a manner acceptable to this plaintiff, and con-
4 tinued to perform said service until the 1st day of January, 1879, from and after which last-mentioned date the said service was performed by the said defendant, Monroe Salisbury, under and by virtue of the subcontract hereinbefore mentioned. That from and after the said 1st of January, 1879, the said subcontract was duly recognized by the Postmaster-General, and such sums as were and became due and payable

under and by virtue of the original contract, between the plaintiff and W. W. Giddings, as afterwards amended, altered, and changed in the manner hereinafter set forth, were paid to the said defendant, Monroe Salisbury.

II.

That for the purpose of facilitating and expediting the service of
5 carrying the United States mail between Fort Bascom and Trinidad and the intermediate places set forth and mentioned in said contract, the said Postmaster-General, by a certain order made on the 1st day of July, 1879, did agree and consent with the said W. W. Giddings to increase the service upon said route and to expedite the said service by shortening the schedule of departures and arrivals on the said route from and after the 15th day of July, 1879.

That in pursuance of the order so issued by the Postmaster-General as aforesaid, the service upon said route was increased on and after July 15, 1879, to three trips per week, and an additional allowance was made therefor of $3,520.00 per annum. That in pursuance of the same order the running time upon said route was reduced from 120 hours
6 to 45 hours, and an additional allowance was made for such expedition on increase of speed of $10,560.00 per annum, said allowance being made in supposed accordance with the provisions of law as contained in section 3961 of the Revised Statutes of the United States.

III.

That the said W. W. Giddings consented to the terms and conditions set forth and mentioned in the said order relative to the expediting and increasing of the said service upon the line of said route; and by reason of said agreement and consent to the terms and conditions
7 set forth and mentioned in said order, upon the part of the said W. W. Giddings, the original contract executed by the said Giddings upon the 31st day of July, 1878, was and became amended, altered, and changed; and the said contract so amended, altered, and changed was accepted by the said Giddings.

IV.

That after the execution of the subcontract hereinbefore mentioned, by and between the said Giddings and the said defendant Monroe Salisbury, whereby it was agreed by and between said parties that the entire amount of compensation which might thereafter become due to said Giddings under the original contract between said Giddings and this plaintiff should be paid over to the said defendant Monroe Salisbury,
8 the said Giddings in his own name, but at the instigation and the request, and in the interest and on behalf of the said defendant Salisbury, did, by means of certain false and fraudulent representations set forth in a certain sworn statement dated December 30th, 1878, and presented to the Postmaster-General, relative to the expediting and facilitating of the service of carrying the mail on the route aforesaid, procure said order made by the Postmaster-General, on the 1st day of July, 1879, thereby amending, altering and changing said original contract.

That the said W. W. Giddings at the instigation and request, and in the interest and in behalf of the said defendant Monroe Salisbury,
9 falsely and fraudulently stated and represented in said sworn statement, so made by him and presented to the Postmaster-General, as aforesaid, that for the purpose of performing said service of carrying the mail over said route No. 39116 three times a week on a schedule of 120 hours, there were required 6 men and 24 horses, and that to perform such service upon a schedule of 75 hours would require 18 men and 72 horses.

That the additional allowance for expedition or increase of speed contained in said order, made on the 1st day of July, 1879, was made solely upon the basis of the aforesaid statement, signed and sworn to on the 30th day of December, 1878, by the said W. W. Giddings, and of a certain proposition made and signed by the said Giddings, and filed in the
10 Post-Office Department on the 24th day of May, 1879, which said statement and proposition were presented by the said Giddings to the Postmaster-General, he, the said Giddings, acting therein at the instigation and request and in the interest and on behalf of the said defendant, Monroe Salisbury. A copy of said statement is hereto annexed, marked Exhibit C, and made a part of this complaint, and a copy of said proposition is also hereto annexed, marked Exhibit D, and made a part hereof.

V.

That the said representations so made in the said sworn statement, by the said W. W. Giddings, were wholly false and fraudulent, in this: That it was therein alleged that for the purpose of performing the service of carrying the mail over said route No. 39116, three times a week
11 on the then existing schedule of 120 hours, there were required 6 men and 24 horses, and that to perform the same service upon the proposed expedited schedule of 75 hours it would require 18 men and 72 horses, thereby making it to appear that the said proposed change of schedule would involve and render necessary an increase in the number of men and horses required to perform said service upon said route of 12 men and 48 horses, which said representations were false, as the said Giddings and as the defendant Salisbury then and there well knew, and were designed to mislead and did mislead the Postmaster-General.

Whereas, in truth and in fact, neither the said W. W. Giddings nor the said defendant, Monroe Salisbury, ever required or used in per-
12 forming the service of carrying the said mail on said route upon the expedited schedule more than 7 men and 22 horses, being an increase of but 1 man over and above the number of men which the said Giddings alleged in his said sworn statement were required to perform said service upon the original schedule of 120 hours, and being 2 horses less than the said Giddings in the said sworn statement alleged were required to perform said service upon said original schedule.

That by means of the said statements and representations, so falsely and fraudulently made by the said W. W. Giddings, and by means of false and fraudulent vouchers, presented to the Post-Office Department, the defendant Monroe Salisbury was paid by and received from this
13 plaintiff a larger sum of money than he was lawfully entitled to receive for the performance of said mail service under said contract as amended, altered, and changed as aforesaid.

That the sum so received by the said defendant from this plaintiff by means of said statements and representations, so falsely and fraudulently made, and said false and fraudulent vouchers presented to the Post-Office Department, as aforesaid, from the 15th day of July, 1879, to the 21st day of July, 1882, was $18,911.35, and the said sum so received was in excess of the amount which the said defendant was legally entitled to receive for the service performed by him.

That the said sum of $18,911.35 has been demanded by the
14 plaintiff from the said defendant, but he, the said defendant, has utterly failed, neglected, and refused, and still does fail, neglect, and refuse to pay the said sum or any part thereof.

Wherefore plaintiff demands judgment against defendant for the said sum of eighteen thousand nine hundred and eleven dollars and thirty-five cents, with interest thereon from the 21st day of July, 1882, at the rate of six per centum per annum, together with the costs of this suit.

2ND COUNT.

And for a further cause of action said plaintiff alleges that the said defendant Monroe Salisbury on the 21st day of July, 1882, was indebted to the said plaintiff in the sum of eighteen thousand nine hundred and
15 eleven dollars and thirty-five cents for such money from the said defendant, before that time had and received to and for the use of the said plaintiff, which said sum of money the said plaintiff avers was then due and payable; yet the said defendant, although often requested so to do, has not paid said sum of money nor any part thereof.

Wherefore plaintiff demands judgment against defendant for the said sum of eighteen thousand nine hundred and eleven dollars and thirty-five cents, with interest thereon from the 21st day of July, 1882, at the rate of six per centum per annum, together with the costs of this suit.

3RD COUNT.

16 And for a further cause of action, the said plaintiff alleges that from and after the first day of October, 1878, up to and including the 30th day of June, 1882, one W. W. Giddings was the contractor, and from and after the 1st day of January, 1879, the defendant, Monroe Salisbury, was the subcontractor under the said McDevitt, for carrying the United States mail upon the mailroute then known and designated as route No. 39116, from Fort Bascom, New Mexico, to Trinidad, in the State of Colorado. That on the 1st day of July, 1879, an order was made by the Postmaster-General, to take effect on the 15th day of July, 1879, increasing the service upon said route to three trips per week, and making an additional allowance therefor of $3,520 per annum;
17 also expediting the schedule and decreasing the running time for carrying the mail on said route from 120 hours to 45 hours, and allowing an additional sum therefor of $10,560.00 per annum, in supposed accordance with the provisions of law as contained in section 3961 of the Revised Statutes of the United States.

That said order for additional allowance for expedition was made upon the basis and by reason of a certain statement, prepared and sworn to on the 30th day of December, 1878, by the said W. W. Giddings, and sub-

sequently presented to the Postmaster-General by said Giddings at the instigation and request, and in the interest and on behalf of the said defendant, Monroe Salisbury. A copy of said statement is hereto
18 annexed, marked Exhibit C, and made a part hereof.

That the said additionala llowance for expedition, made as aforesaid, was thereafter, from time to time, paid to the defendant, Monroe Salisbury, by the plaintiff's officers.

The plaintiff further says that the allegations in the said sworn statement presented to the Postmaster-General as aforesaid, upon the basis and by reason of which the said additional allowance for expedition was ordered and payments made as aforesaid, were false and untrue, as the defendant then and there well knew, in this: That it was therein alleged that the number of men and horses required to perform the mail service on the said route three times a week upon the original schedule of 120
19 hours, was 6 men and 24 horses, and that upon the proposed expedited schedule of 75 hours it would require 18 men and 72 horses, thereby making it to appear that an increase would be required in the number of men and horses necessary to perform the mail service upon said route, by reason of the change of schedule, of 12 men and 48 horses.

Whereas, in truth and in fact, neither the said W. W. Giddings nor the said defendant, Monroe Salisbury, acting for or under him, ever required or used in performing the service of carrying the said mail on said route upon the expedited schedule more than 7 men and 22 horses, being an increase of but 1 man over and above the number of men which
20 said Giddings alleged in his said sworn statement were required to perform said service upon the original schedule of 120 hours, and being 2 horses less than the said Giddings in said sworn statement alleged were required to perform said service upon said original schedule. And the said false allegations were designed to mislead and did mislead the Postmaster-General.

And the plaintiff further says that by reason of the said false allegations in the statement aforesaid, the plaintiff's officers were induced to pay the moneys aforesaid from time to time between the 15th day of July 1879, and the 21st day of July, 1882, amounting in the aggregate to the sum of $18,911.35, which sum was paid by the plaintiff's officers
21 to the defendant, as above set forth, in mistake of fact, and was received by the said defendant contrary to the provisions of section 3961 of the Revised Statutes of the United States. Said payments are more fully and at length set out in the statement hereto annexed, marked Exhibit E, and made a part of this complaint. Said exhibit also shows the amount which said defendant was lawfully entitled to received upon the basis of the stock and carriers actually employed.

Wherefore plaintiff demands judgment against defendant for the said sum of eighteen thousand nine hundred and eleven dollars and thirty-five cents, with interest thereon from the 21st day of July, 1882, at the rate of six per centum per annum, together with the costs of this suit.

S. G. HILBORN,
United States Attorney.
GEO. L. DOUGLASS,
Of Counsel.

22 *Exhibit A.*

POST-OFFICE DEPARTMENT,
Washington, D. C., Oct. 3rd, 1884.

I certify that the annexed is a true copy taken from the files and records of this Department. In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed, the day and year above written.

[SEAL.] H. D. LYMAN,
Acting Postmaster-General.

United States of America, Deadwood, Lawrence Co., Dakota.

No. 39116, $1,760 per annum.

This article of contract, made the 31st day of July, eighteen hundred and seventy-eight, between the United States of America (acting in this behalf by the Postmaster-General) and Wm. W. Giddings, con-
23 tractor, and [Insert here names of sureties and their P. O. address.] John Evaves, & Edwin R. Collins, of Lawrence Co., Dakota Territory, and M. L. Couk, of same place, as his sureties.

Witnesseth, that whereas Wm. W. Giddings has been accepted, according to law, as contractor for transporting the mail on route No. 39116, from Ft. Bascom, N. Mex., by Towner, Apache, Chico Springs, Kiowa, Troy, Una de Gata, Troyburgh, and Sugarita, to Trinidad, Colo., and back once a week by a schedule satisfactory to the Department, at seventeen hundred and sixty dollars per year, for and during the term beginning October first, eighteen hundred and seventy-eight, and ending June thirtieth, eighteen hundred and eight-two; now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and
24 agree with the United States of America, and do bind themselves—

1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase, during the term of this contract, and within the time fixed in the annexed schedule of departures and arrivals; and so to carry until said schedule is altered by the authority of the Postmaster General of the United States, as hereinafter provided, and then to carry according to such altered schedule; and in all cases to carry said mail in preference to passengers and freight, and to their entire exclusion if its weight, bulk, or safety shall so require.
25 And that they will carry the mail, upon demand, by any conveyance which said contractor regularly runs, or is concerned in running, on the route beyond the number of trips above specified, in the same manner and subject to the same regulations as are herein provided touching regular trips. 2d. To carry the mail in a safe and secure manner, free from wet or other injury, under a sufficient oilcloth or bearskin if carried on a horse, and in a boot under the driver's seat if carried in a coach or other vehicle.

3d. To take the mail and every part thereof from, and deliver it and every part thereof at, each post-office on the route, or that may hereafter be established on the route (or on any route that may hereafter be established, and to which this contract may be extended as hereinafter
26 provided), and into the post-office at each end of the route, and into the post-office, if one is there kept, at the place at which the

carrier stops for the night, and if no post-office is kept, to lock it up in some secure place, at the risk of the contractor.

They also undertake, covenant, and agree with the United States of America, and do bind themselves, jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom the said contractor shall commit the care and transportation of the mail, and his careful and faithful performance of the obligations assumed herein and those imposed by law, not to commit the care or transportation of the mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required so to do by the Postmaster-
27 General; not to transmit, by themselves, or either of them, or either of their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail; to carry post-office blanks, mail locks, and bags, and other postal supplies, and also the special agents of the Department on the exhibition of their credentials, if a coach or other suitable conveyance is used, without additional charge; to collect quarterly, if required by the Postmaster-General, of postmasters on the route, the balances due from them to the United States on their quarterly
28 returns, and faithfully to render an account thereof to the Postmaster-General in the settlement of the quarterly accounts of said contractor, and to pay over to the Auditor of the Treasury for the Post-Office Department, on the order of the Postmaster-General, all balances remaining in his hands.

For which services, when performed, the said Wm. W. Giddings, contractor, is to be paid by the United States the sum of seventeen hundred and sixty dollars a year, to wit, quarterly, in the months of November, February, May, and August, through the postmasters on the route, or otherwise, at the option of the Postmaster General; said pay to be subject, however, to be reduced or discontinued by the Postmaster-General, as hereinafter stipulated, or to be suspended in case of delinquency.

29 It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may discontinue or extend this contract, change the schedule and termini of the route, and alter, increase, decrease, or extend the service in accordance with law, he allowing a pro rata increase of compensation for any additional service thereby required, or for increased speed, if the employment of additional stock or carriers is rendered necessary; and in case of decrease, curtailment, or discontinuance of service, as a full indemnity to said contractor, one month's extra pay on the amount of service dispensed with, and a pro rata compensation for the service retained. Provided however, that, in case of increase expedition, the contractor may, upon timely notice, relinquish the contract.

30 It is hereby also stipulated and agreed by the said contractors and his sureties as aforesaid, that they shall forfeit—

1. The pay of a trip when it is not run, and, in addition, if no sufficient excuse for the failure is furnished, an amount not more than three times the pay of the trip.

2. At least one-fourth of the pay of a trip when the running is so far behind time as to fail to make connection with a depending mail.

3. For violating any of the foregoing provisions touching the transmission of commercial intelligence more rapidly than by mail; or giving preference to passengers or freight over the mail or any portion thereof, or for leaving the same for their accommodation; or carrying,
31 otherwise than in the mail, matter which should go by mail; or transporting persons engaged in so doing, with knowledge thereof, a penalty equal to a quarter's pay.

4. For violating any other provision of this contract touching the carriage of the mails, or the time and manner thereof, without a satisfactory explanation of the delinquency, in due time, to the Postmaster-General, a penalty in his discretion. That these forfeitures may be increased into penalties of a higher amount, in the discretion of the Postmaster-General, according to the nature or frequency of the failure and the importance of the mail. Provided that, except as herein otherwise specified, and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

32 And it is hereby further stipulated and agreed by the said contractor and his sureties that the Postmaster-General may annul the contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier when required by the Department; for transmitting commercial intelligence or matter which should go by mail, contrary to the stipulations herein; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress, and whenever, in the opinion of the Postmaster-General, the service can not be safely continued, the revenues collected, or the laws maintained on the road or roads herein.

33 And it is hereby further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor and his sureties under this contract; but such damages may, for the purpose of set-off or counter-claim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post-office Department.

And it is hereby stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractors shall be made by the Postmaster-General.

34 And this contract shall, in all its parts, be subject to the terms and requirements of the act of Congress approved April twenty-first, one thousand eight hundred and eight, entitled "An act concerning public contracts," and of the act of Congress approved June eighth, one thousand eight hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department."

In witness whereof, the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has attested the same

by his signature, and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names, respectively.

D. M. KEY,
Postmaster-General.

35 Signed, sealed, and delivered by the Postmaster-General in the presence of—
J. N. DORRIS.
And by the other parties hereto in the presence of—
MOSES LIVERMAN,
W. M. WILSON,
Witnesses.

Signed this 24th day of August, 1878.
WM. W. GIDDINGS, [SEAL.]
Contractor.

Signed this " day of " 1878.
JOHN EAVES, [SEAL.]

Signed this " day of " 1878.
EDWIN R. COLLINS, [SEAL.]
Sureties.

" " " " " " 1878.
M. Z. COUK, [SEAL.]
Surety.

POST-OFFICE, DEADWOOD, DAK.,
August 27, 1878.

I hereby certify that John Eaves, of Lawrence Co., Dak. Ter., and Edwin R. Collins and M. Z. Couk, of the same place, are good and sufficient sureties for the amount of the foregoing contract.

R. O. ADAMS, *Postmaster.*

36 The schedule of departures and arrivals:
Leave Fort Bascom Monday at 6 a. m.
Arrive at Trinidad in 120 hours.
Leave " Monday at 6 a. m.
Arrive at Fort Bascom in 120 hours.

Provided, that when more than seven minutes are taken for opening and closing the mails at any office the surplus time so taken is to be allowed in addition to the time in this schedule.

Certificate of the oath of mail contractors and carriers, required by act of Congress of June 8, 1872, as amended by act of March 5, 1874 (18th Stats., p. 19).

[Take this oath after signing the foregoing contract.]

I, Wm. W. Giddings, being "employed in the care, custody, and conveyance of the mail" as contractor on route No. 39116, from Fort
37 Bascom, New Mexico, to Trinidad, State of Colorado, do swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishlishment of post-offices and post-roads within the United States; and that

I will honestly and truly account for and pay over any moneys belonging to the said United States which may come into my possession or control. And I do further solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic. So help me God.

WM. W. GIDDINGS, *Contractor.*

COUNTY OF LAWRENCE,
Ter. of Dakota, ss:

Sworn before the subscriber, Moses Livermore, a notary public for the county and State aforesaid, this 24th day of August, A. D. 1878;
38 and I also certify that the person above named is above the age of twenty-one years to the best of my knowledge and belief.

MOSES LIVERMORE, [SEAL.]
Notary Public.

NOTE.—When the oath is taken before a justice of the peace, or any other officer not using a seal, except a judge of a United States court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer.

The undersigned, clerk of the district court of Lawrence County, in the Ter. of Dakota, hereby certifies that Moses Livermore, whose name is signed to the above certificate of the oath of Wm. W. Giddings, is now, and was at the time of signing the same, a duly commissioned and
39 qualified notary public, authorized to administer oaths and affirmations in the Ter. of Dakota.

[SEAL.] A. R. Z. DANSON, (Signature.)
Clerk Dist. Court. [Office.]

Exhibit A. Certificate (F).

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, R. F. Crowell, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office of the account of William W. Giddings, contractor for the transportation of the mails on route No. 39116, in New Mexico, from October 1st, 1878, to June 30, 1882.

In testimony whereof I have hereunto signed my name and
40 caused to be affixed my seal of office, at the city of Washington, District of Columbia, this third day of October, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] R. F. CROWELL,
Auditor.

Statement of account.

DR. *William W. Giddings, New Mexico, contractor, in account with the United States.* CR.

Route.		
39116	To deduction, 4th qr., 1878	16.92
"	" part of warrant, favor W. W. Giddings	423.08
"	" " " " M. Salisbury, subcont'r	440.00
"	" " " " "	440.00
"	" deduction, 3rd qr., 1879	1,538.28
"	" part of warrant, favor M. Salisbury, subcont'r	1,886.07
"	" warrant, " " "	3,960.00
"	" part of warrant " " "	4,014.10
"	" deduction, 2nd qr., 1880	130.50
"	" part of warrant, favor M. Salisbury, subcont'r	3,856.08
"	" deduction, 3rd qr., 1880	386.71
"	" part of warrant, favor M. Salisbury, subcont'r	3,102.37
"	" deduction, 4th qr., 1880	215.68
"	" warrant, favor M. Salisbury, subcont'r	3,328.07
"	" deduction 1st qr., 1881	120.60
"	" warrant, favor M. Salisbury, subcont'r	3,475.50
"	" deduction, 2nd qr., 1881	60.46
"	" warrant, favor M. Salisbury, subcont'r	3,535.64
"	" " " "	390.00
"	Forward	31,320.06

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Route.		
	To am't brought forward	31,320.06
39116	" warrant from M. Salisbury, subcont'r	1,951.77
"	" " " " "	818.75
"	" " " " "	818.75
"	" " " " "	818.75
	Warrant, No. 3359, New York, July 21, 1882	
		35,728.08

Route.		
39116	By transportation, 4th qr., 1881	440.00
"	" " 1st " 1879	440.00
"	" " 2nd " "	440.00
"	" " 3rd " "	3,424.35
"	" " 4th " "	3,960.00
"	" " 1st " 1880	4,014.10
"	" " 2nd " "	3,793.93
"	" one month's extra pay on service dispensed with under order April 24, 1880	192.65
"	" transportation, 3rd qr., 1880	3,489.08
"	" " 4th " "	3,543.75
"	" " 1st " 1881	3,596.10
"	" " 2nd " "	3,596.10
"	" remission of deduction	215.68
"	" " "	120.60
"	" " "	53.72
	Forward	31,320.06

Route.		
39116	By am't brought forward	31,320.06
"	" transportation, 3rd qr., 1881	1,729.99
"	" one month's extra pay, under order July 14, '81	218.81
"	" " " " " " Aug. 15, '81	2.97
"	" transportation, 4th qr., 1881	818.75
"	" " 1st " 1882	818.75
"	" " 2nd " "	818.75
		35,728.08

OFFICE OF THE AUDITOR OF THE TREASURY FOR THE POST-OFFICE DEPARTMENT,
Washington, D. C., October 2nd, 1884.

R. F. CROWELL,
Auditor.

43 *Exhibit B.*

POST-OFFICE DEPARTMENT,
Washington, D. C., October 9, 1884.

I certify that the annexed is a true copy taken from the files and records of this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post Office Department to be affixed, the day and year above written.

[SEAL.] FRANK HATTON,
Acting Postmaster-General.

This article of contract, made and entered into by and between W. W. Giddings, contractor for carrying the United States' mails on route No. 39116, between Fort Bascom, New Mexico, and Trinidad, Colorado, and also contractor on route No. 39114, between Fort Stanton,
44 New Mexico, and Fort Davis, Texas, of the one part, and Monroe Salisbury, of the other part, witnesseth, that whereas the said Monroe Salisbury has been accepted by the said W. W. Giddings as subcontractor for carrying the United States mails on route No. 39116 and No. 39114 for the period commencing on the first day of October, A. D. 1878, and terminating on the thirtieth of June, A. D. 1882. Now, therefore, and in consideration of the acceptance of the said Monroe Salisbury, as subcontractor, he, the said Monroe Salisbury, doth undertake, covenant, and agree, and by these presents hath undertaken, covenanted, and agreed with the said W. W. Giddings, to transport the United States mails
45 on the above numbered and named routes, and for the period above mentioned, in strict accordance with his, the said W. W. Giddings, contracts with the Post Office Department, and in conformity with the postal laws of the United States, the rules and regulations of the Post Office Department and the orders of the Postmaster-General; and that he will hold himself, the said Monroe Salisbury, responsible in damages to the said W. W. Giddings for any and all losses, fines, and penalties that may ensue from any violation of the terms of his, the said W. W. Giddings, contracts with the Post-Office Department, or from any violation of said laws, rules, regulations, and orders.

In consideration of the above undertakings, covenants, and agree-
46 ments of the said Monroe Salisbury, the said W. W. Giddings herewith agrees to pay, and by these presents hath agreed to pay, to the said Monroe Salisbury the full amount of mail pay that shall from time to time become due to him, the said W. W. Giddings, up to the thirtieth day of June, A. D. 1882.

This contract to bind the heirs and legal representatives of the parties thereto.

In witness whereof we have hereunto set our hands and seals, this 20th day of December, A. D. 1878.

(Signed) WILLIAM W. GIDDINGS. [SEAL.]
(Signed) MONROE SALISBURY. [SEAL.]

Witness—
(Signed) W. F. BARTLIT.
(Signed) HUGH WHITE.

47 *Exhibit C.* 39116

POST-OFFICE DEPARTMENT,
Washington, D. C., August 2nd, 1883.

I, A. D. Hazen, Act'g Postmaster-General of the United States of America, certify that the annexed is a true copy of the original sworn statement on file in this Department.

In testimony whereof, I have hereto set my hand and caused the seal of the Post-Office Department to be affixed, at the city of Washington, the day and year above written.

[SEAL.] A. D. HAZEN,
Act'g Postmaster-General.

TERRITORY OF DAKOTA,
County of Lawrence, ss.

48 I, William Giddings, do swear to perform, three times a week, service on route No. 39116, from Fort Bascom, New Mexico, to Trinidad, Colorado; on the present schedule of 120 hours, it will require 6 men and 24 horses. To perform the same service on a reduced schedule of 75 hours it will require 18 men and 72 horses.

(Signed) WILLIAM W. GIDDINGS.

Subscribed and sworn to before me this 30th day of December, 1878.

(Signed) JAMES M. YOUNG,
Notary Public.

Exhibit D. 39116

POST-OFFICE DEPARTMENT,
Washington, D. C., August 2nd, 1883.

I, A. D. Hazen, Act'g Postmaster-General of the United States
49 of America, certify that the annexed is a true copy of the original on file in this Department.

In testimony whereof I have hereunto set my hand and caused the seal of the Post-Office Department to be affixed, at the city of Washington the day and year above written.

[SEAL.] A. D. HAZEN,
Act'g Postmaster-General.

HON. THOS. J. BRADY,
2nd Ass't P. M. Gen'l:

SIR: I will perform the service on route No. 39116, Fort Bascom, New Mexico, to Trinidad, Colorado, on a schedule of forty-five hours (45) instead of seventy hours (70), and for the amount of pay asked in my former proposition.

Respectfully,
(Signed) WILLIAM W. GIDDINGS.

50 G. F. S., Oct. 9, 1884.

Exhibit E.

Route No. 39116. Fort Bascom, New Mexico, to Trinidad, Colorado. Contract term Oct. 1, 1878, to June 30, 1882. Cont'r, Wm. W. Giddings. Subcont'r, W. Salisbury (f'm Jan'y 1, '79).

Cost of service was as follows:

From Oct. 1, 1878, to July 14, 1879, @ $1,760.00 per annum				$1,386.96
" July 15, 1879, " Feb'y 14, 1880, " 15,840.00 " "				9,275.63
" Feb'y 15, 1880, " May 18, 1880, " 16,268.10 " "				4,201.10
" May 19, 1880, " Nov. 14, 1880, " 13,956.52 " "				6,844.44
" Nov. 15, 1880, " Aug. 3, 1881, " 14,384.12 " "				10,358.33
" Aug. 4, 1881, " Aug. 31, 1881, " 2,169.08 " "				165.04
" Sept. 1, 1881, " Sept. 10, 1881, " 2,133.40 " "				57.97
" Sep. 11, 1881, " June 30, 1882, " 3,275.02 " "				2,634.23
Additional allowance on service dispensed with, viz:				
By order of April 24, 1880, 1 mo.'s extra extra pay @			$2,311.78 p. a	192.65
" " " July 14, 1881, 1 " " " "			2,625.73 "	218.81
" " " Aug. 15, 1881, 1 " " " "			35.68 "	2.97
Total allowance for service				35,338.13
Auditor settling by quarters made this less by				.05
				35,338.08

51 Deductions were made as follows:

Quarter ended Dec. 31, 1878	$16.92	
" " Sep. 30, 1879	1,538.28	
" " June 30, 1880	130.50	
" " Sep. 30, 1880	386.71	
" " Dec. 31, 1880	215.68	
" " Mar. 31, 1881	120.60	
" " June 30, 1881	60.46	
Total deduction		$2,469.15

Remissions were made as follows:

Quarter ended Dec. 31, 1880	$215.68	
" " Mar. 31, 1881	120.60	
" " June 30, 1881	53.72	
Total remission		390.00
Totsl deduction not remitted		2,079.15

RECAPITULATION.

Total allowance for service	35,338.08
Total deduction not remitted	2,079.15
Amount actually paid for service	33,258.93

52 Pay on the basis of stock and carriers actually employed would have been as follows:

From Oct. 1, 1878 to July 14, 1879 @ $1,760.00 p. a	$1,386.96
" July 15, 1879 " Feb'y 14, 1880 " 5,280.00 "	3,091.88
" Feb'y 15, 1880 " May 18, 1880 " 5,422.70 "	1,400.36
" May 19, 1880 " Nov. 14, 1880 " 4,652.11 "	2,281.45
" Nov. 15, 1880 " Aug. 3, 1881 " 4,794.81 "	3,452.78
" Aug. 4, 1881 " Aug. 31, 1881 " 2,169.08 "	165.04
" Sep. 1, 1881 " Sep. 10, 1881 " 2,133.40 "	57.97
" Sep. 11, 1881 " June 30, 1882 " 3,275.02 "	2,634.23
Additional allowance on service dispensed with, viz:	
By order of April 24, 1880, 1 mo's extra pay @ $770.59	64.22
" " " July 14, 1881, 1 mo's extra pay @ 2,625.73	218.81
" " " Aug. 15, 1881, 1 " " " " 35.68	2.97
Total allowance for service (new basis)	14,756.67

Deductions on new basis would have been:

Quarter ended Dec. 31, 1878	$16.92	
" " Sep. 30, 1879	392.17	
Total deduction (no remissions) on new basis		$409.09
Amount which should have been paid		14,347.58

FINAL RECAPITULATION.

Amount actually paid for service	33,258.93
Amount which should have been paid	14,347.58
Amount to be recouped	18,911.35

(Endorsed:) Filed, March 13, 1885. L. S. B. Sawyer, clerk.

53 *Summons.*

United States of America. Circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES OF America, plaintiff, *vs.* MONROE SALISBURY, defendant. } Action brought in the said circuit court, and the complaint filed in the office of the clerk of said circuit court, in the city and county of San Francisco.

The President of the United States of America, greeting, to Monroe Salisbury:

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the circuit court of the United States, ninth circuit, in and for the district of California, and to file your plea, answer, or demurrer to the complaint filed therein (a certified copy of which accompanies this summons) in the office of the clerk of said court, in the city and county of San Francisco, within ten days after the service on you of this summons—if served in this county; or if served out of this county, then within thirty days—or judgment by default will be taken against you.

The said action is brought to recover from you the sum of eighteen thousand nine hundred and eleven $\frac{35}{100}$ dollars, money alleged to have been had and received by you and paid by said plaintiff to you by reason of certain false and fraudulent representations, &c., made and presented to the Post-Office Department of the United States, together with interest thereon from the 21st of July, 1882, at the rate of six per centum per annum and the costs of this action, all of which is more fully set out in the complaint on file herein, to which reference is hereby made; and if you fail to appear and plead, answer, or demur, as herein required, your default will be entered and the plaintiff will apply to the court for the relief demanded in the complaint herein.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 13th day of March, in the year of our Lord one thousand eight hundred and eighty-five, and of our independence the 109th.

[SEAL.] L. S. B. SAWYER, *Clerk.*

54 UNITED STATES MARSHAL'S OFFICE,
District of California.

I hereby certify that I received the within writ on the 16th day of March, 1885, and personally served the same on the 1st day of April, 1885, by delivering to and leaving with Monroe Salisbury, said defendant named therein, personally, at the city and county of San Francisco, in said district, a certified copy thereof, together with a copy of the complaint, certified to by L. S. B. Sawyer, clerk U. S. circuit court, attached thereto.

M. M. DREW,
U. S. Marshal.
By W. L. MCEWEN,
Deputy.

SAN FRANCISCO, *April 1st*, 1885.

(Endorsed:) No. 3636. U. S. circuit court, ninth circuit, district of California. The United States of America vs. Monroe Salisbury. Summons. S. G. Hilborn, plaintiff's attorney. Filed April 1st, 1885. L. S. B. Sawyer, clerk. By F. D. Monckton, deputy clerk.

55 *Demurrer.*

In the United States circuit court, ninth circuit, district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
MONROE SALISBURY, DEFENDANT. } No. 3636.

Now comes the defendant, Monroe Sailsbury, and demurs to the complaint of plaintiff, filed herein, and specifies as grounds of demurrer:

1st. That the complaint does not state facts sufficient to constitute a cause of action against this defendant.

That the first cause of action therein attempted to be set out does not state facts sufficient to constitute a cause of action against this defendant.

That the second cause of action therein attempted to be set out
56 does not state facts sufficient to constitute a cause of action against this defendant.

That the third cause of action therein attempted to be set out does not state facts sufficient to constitute a cause of action against this defendant.

2d. That there is a defect of parties defendant in the first cause of action in said complaint attempted to be set out in this: That if any cause of action exists against this defendant, one W. W. Giddings, who is alleged in said complaint to have entered into a certain contract with the plaintiff herein, on the 31st day of July, 1878, should be joined with this defendant as a party defendant herein.

That there is a defect of parties defendant in the third cause of action in said complaint attempted to be set out in this: That if any cause
57 of action exists against this defendant, one W. W. Giddings, who is alleged in said complaint to have been the contractor upon the certain mail route set out and designated in said complaint, should be joined with the defendant as a party defendant herein.

3d. That the first cause of action attempted to be set out in said complaint is ambiguous, unintelligible, and uncertain, in this:

(A) That it does not appear from said complaint what false and fraudulent vouchers, if any, were presented to the Post-Office Department, nor does it appear therefrom in any way how or in what manner or by whom such false and fraudulent vouchers were made, if made at all, or were presented to said Post-Office Department, if presented at all.

58 (B) That it does not appear from said complaint, or at all, how or in what manner the sum of $18,911.35, alleged to have been received by the defendant, was in excess of the amount which the defendant was entitled to receive for mail service performed between the fifteenth day of July, 1879, and the 21st day of July, 1882; nor does it appear from said complaint, or at all, what amount the defendant was entitled to receive for such mail service; nor does it appear in said complaint in any manner, or at all, what amount the defendant did receive, if anything, for such mail service.

Wherefore, the said defendant prays judgment to be dismissed hence, without day and for his costs.

E. B. YOUNG,
Attorney for Defendant.

59 I hereby certify that, in my opinion, the demurrer is well founded in points of law.

E. B. YOUNG,
Attorney for Defendant.

(Endorsed:) Due service of the within demurrer and receipt of a copy thereof admitted this 10th day of July, A. D. 1885. S. G. Hilborn, att'y for plaintiff. Filed July 10, 1885. L. S. B. Sawyer, clerk.

60 *Order sustaining demurrer, etc.*

At a stated term, to wit, the July term, A. D. 1890, of the circuit court of the United States of America, of the ninth judicial circuit, and for the northern district of California, held at the court-room in the city and county of San Francisco on Monday, the 15th day of September, in the year of our Lord one thousand eight hundred and ninety.

Present: the Honorable Lorenzo Sawyer, circuit judge.

THE UNITED STATES OF AMERICA
vs.
MONROE SALISBURY. } No. 3636.

The demurrer to the complaint herein heretofore argued and submitted to the court for consideration and decision, having been duly con-
61 sidered, it is ordered that said demurrer be and the same hereby is sustained, the complaint dismissed, and judgment entered herein accordingly.

62 *Judgment.*

In the circuit court of the United States, ninth judicial circuit, northern district of California.

THE UNITED STATES OF AMERICA,
vs.
MONROE SALISBURY. } No. 3636.

The court having sustained the demurrer of defendant to the complaint of plaintiff, and ordered that said plaintiff's complaint herein be dismissed,

Now, therefore, by virtue of the law, and by reason of the premises aforesaid, it is considered by the court that the plaintiff take nothing by this action, and that the defendant go hereof without day.

Judgment entered September 15, 1890.

L. S. B. SAWYER,
Clerk.

63 I hereby certify that the foregoing is a full, true, and correct copy of an original judgment entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this 15th day of September, A. D. 1890.

[SEAL.] L. S. B. SAWYER,
Clerk.

Filed September 15, 1890. L. S. B. Sawyer, clerk.

64 In the circuit court of the United States, ninth judicial circuit, in and for the northern district of California.

UNITED STATES
vs.
M. SALISBURY. } No. 3636.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the above-entitled action.

Attest my hand and the seal of said circuit court, this 15 day of Sept., 1890.

[SEAL.] L. S. B. SAWYER,
Clerk.
By F. D. MONCTON,
Deputy Clerk.

(Endorsed:) Judgment roll. Filed Sept. 15, 1890. L. S. B. Sawyer, clerk. By F. D. Monckton, deputy clerk.

65 In the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs. } 3636.
MONROE SALISBURY, DEFENDANT.

I, L. S. B. Sawyer, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify that the foregoing sixty-four written and printed pages numbered from 1 to 64, inclusive, are a full, true, and correct copy of the record and of the proceedings in the above and therein entitlde cause, and that the same together constitute the return to the annexed writ of error.

66 Witness my hand and the seal of said circuit court this 22d day of April, A. D. 1891.

[SEAL.] L. S. B. SAWYER, *Clerk.*

67 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the judges of the circuit court of the United States of the ninth judicial circuit, in and for the northern district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you between The United States of America, plaintiffs and plaintiffs in error, and Monroe Salisbury, defendant and defendant in error, a manifest error hath happened, to the great damage of the said United States of America, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the fourteenth day of May next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 16th day of March, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

[SEAL.] L. S. B. SAWYER,
Clerk of the Circuit Court of the United States
for the Northern District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
Circuit Judge, Ninth Judicial Circuit.

68 The answer of the judges of the circuit court of the United States of America for the northern district of California.

The record and all proceedings of the plaint, whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court:

[SEAL.] L. S. B. SAWYER,
Clerk.

(Indorsed:) No. 3636. United States Supreme Court. The United States of America, plaintiffs and plaintiffs in error, vs. Monroe Salisbury, defendant and defendant in error. Writ of error. Filed April 15, 1890. L. S. B. Sawyer, clerk.

69 United States of America, ss., to Monroe Salisbury, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 14th day of May, A. D. 1891, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, wherein the United States of America are plaintiffs and plaintiffs in error and you are defendant and defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Lorenzo Sawyer, judge of the circuit court of the United States in and for the northern district of California, this 16th day of March, A. D. 1891, and of the Independence of the United States the one hundred and fifteenth.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

70 (Indorsed:) No. 3636. In the Supreme Court of the United States. The United States of America, plaintiffs and plaintiffs in error vs. Monroe Salisbury, defendant and defendant in error. Citation. Service of a copy of the within citation is hereby admitted this 15 day of Ap'l 1891. E. B. Young, attorney for defendant and defendant in error. Filed April 15, 1891. L. S. B. Sawyer, clerk.

(Indorsement on cover:) Supreme Court U. S., clerks office. Received May 16, 1891. No. 170. 14647. The United States, plaintiff in error, vs. Monroe Salisbury. N. California C. C. U. S. Filed May 16th, 1891.